ously. This, of course, is because of the practical difficulty in proving malice in such a case. The rules of proximate cause should not be made a procrustean bed, and results as unjust as this might be avoided if the courts bore in mind the actual probable results today of wrongful dishonor of a check.[17] *I. L. N.*

BILLS AND NOTES: PROVISION IN A PROMISSORY NOTE FOR RETENTION OF TITLE TO CHATTEL—Is the negotiability of a promissory note having all the characteristics of a negotiable instrument destroyed in the hands of an indorsee in due course, who takes it with full knowledge that the note is given as part payment of the purchase price of a chattel, title to which, by the terms of a contract of sale incorporated into the note, will remain in the vendor until the consideration is paid? Prior to the adoption of the Uniform Negotiable Instruments Law the majority view was that such a note was negotiable.[1] But a few jurisdictions held that such a chattel note was non-negotiable.[2]

It was the intent of the framers of the Uniform Negotiable Instruments Law which California has accepted, to reconcile this division of authority by adopting the rule that the so-called chattel note would be negotiable.[3] Recognized authorities, however, predicted that the words of section three of the enactment stating that "an unqualified order or promise to pay is unconditional within the meaning of this act though coupled with . . . . a statement of the transaction which gives rise to the instrument" were not specific enough to change the view of the minority jurisdictions.[4] In Minnesota this is exactly what has happened.[5] There is strong indication that other jurisdictions will follow the common law minority decisions even though in those jurisdictions the point remained undecided up to the time of the adoption of Uniform Negotiable Instruments Law.[6]

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[17] See n. 7, supra.

[1] 3 R. C. L. 917; 8 Corpus Juris 129; Chicago Ry. Equipment Co. v. Merchants Bank (1889) 136 U. S. 268, 10 Sup. Ct. Rep. 999, 34 L. Ed. 349. Judicial utterances, however, may be found that claim the general rule was the very opposite. Fleming v. Sherwood (1912) 24 N. D. 144, 139 N. W. 101, 43 L. R. A. (N. S.) 945, 948. It is believed that such statement is erroneous.

[2] Sloan v. McCarty (1883) 134 Mass. 245; South Bend Co. v. Paddock (1887) 37 Kan. 510, 15 Pac. 574; Deering v. Thom (1882) 29 Minn. 120, 12 N. W. 350; Brannon, Negotiable Instruments Law (3d ed.) p. 421; 8 Corpus Juris 129.

[3] This was to be accomplished by Sec. 3, subsection 2, of the Uniform Negotiable Instruments Act, Cal. Civ. Code, § 3084. Confirm Brannon, Negotiable Instruments Law (3d ed.) p. 477.

[4] Brannon, Negotiable Instruments Law (3d ed.); Ames' Criticisms, p. 421-2, 447, 477-8. A prediction, also held by others, 33 Harvard Law Review, 255, 258. The section is indefinite and incomplete. See 8 California Law Review, 172-4.

[5] Polk County State Bank of Crookston v. Walters (1920) 145 Minn. 149, 176 N. W. 496, 497.

[6] Fleming v. Sherwood, supra, n. 1.

On the other hand, there are numerous jurisdictions since the adoption of the act which hold a promissory note given for a chattel and stipulating that the title to the chattel shall remain in the vendor-payee until the note is paid is absolutely unconditional and consequently fully negotiable.[7] This split in authority is the natural consequence of the doubtful wording of the statute. The uncertainty of the wording calls for interpretation by the various courts. The general rule throughout the United States prohibits the courts from considering the discussions of the legislature or the intent of the framers of an act as having any bearing upon the language of a statute.[8] This broad rule is subject to an exception where the discussions have a bearing on the history of the wrong and the evil which the legislative act is attempting to remedy.

Conceding that the intent of the framers of the enactment is inadmissible evidence, by what principle then should the courts be governed? Have the courts a right to consider the prevailing conditions of a locality[9] upon the theory that had the matter been presented at the time of the adoption the ambiguity of the statute would have been corrected in accord with local circumstances or should not the fact that this act was intended for a uniform act prevail? If one yields to the local considerations it is easy to perceive that in an agricultural community it might be more important that the original makers have their defenses than that negotiability be extended. In a commercial and financial district, however, the tendency would be to extend negotiability. Placing local interests paramount is disastrous to all attempts to secure uniformity. It would seem that if a legislature adopts a uniform act the courts should exercise every possible means for carrying out the underlying principle of uniformity. If the court cannot consider the intent of the framers of the act, should not the majority view favoring negotiability be accepted in the present instance, because it is a step at least towards uniformity?

In the case of *Peoples Bank v. Porter*,[10] California has placed itself in line with the authorities favoring negotiability. This line of authority is not to be confused with cases varying in the essential facts and giving rise to different legal questions. For example,

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[7] Welch v. Owenby (1918) 175 Pac. 746 (Okl.); Whitlock v. Auburn Lumber Co. (1907) 145 N. C. 120, 58 S. E. 909, 12 L. R. A. (N. S.) 1214,—in this case the Uniform Negotiable Instruments Law was not cited; Citizens National Bank v. Bucheit (1916) 14 Ala. App. 511, 71 So. 82; Ex parte Bledsoe (1913) 180 Ala. 586, 61 So. 813.

[8] Collection of Cases 19 Ann. Cas. 1031; Leese v. Clark (1862) 20 Cal. 388, 425; McGarrahan v. Maxwell (1865) 28 Cal. 75, 96. The Continental rule is the very opposite of that adopted by the common law. (Geny section 152, Planiol, 84.) There the debates of the legislative body and the reports of the drafters of the act are the very first evidence to be considered.

[9] Collection of Cases 36 Cyc. 1111, 1112. There is some authority for the proposition that where a construction of a statute is doubtful the public interests may be considered.

[10] (May 31, 1922) 38 Cal. App. Dec. 291, 292, 208 Pac. 200.

where the maturity of the instrument is actually dependent upon the performance of various acts demanded by the incorporated contract and these acts provide for something very different from a provision for the retention of title for security, it is clear that such a note is non-negotiable.[11] It is equally true that courts have declared the paper non-negotiable if the payee is authorized to declare the notes due if the payee at any time felt insecure.[12] The above mentioned classes of cases are very different from the instant case. The District Court of Appeal of California rightly refused to be influenced by these decisions in the principal case.

Certain jurisdictions have developed some very fine limitations upon this proposition. For instance, a phrase retaining the right of ownership as synonymous with the right of possession and the right of title is said to make the note non-negotiable.[13] The Supreme Court of Michigan makes a distinction between a note providing "the title to the said stock of groceries to remain in said Soules until this note is fully paid,"[14] and a note providing "that title to the above mentioned property does not pass to the undersigned and that until all said notes are paid the title to the aforesaid shall remain in the said Low Art Tile Fountain Company."[15] The first arrangement is called a conditional sale and therefore non-negotiable. The second phrasing is said to express a completed sale with title retained for security. The Supreme Court of Michigan distinguishes the two cases on the facts of each case. It would seem that if one instrument is negotiable the other is also.

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[11] Robertson v. Kochtitzky (1919) 217 S. W. 543 (Mo.); that work demanded by contract should be completed naturally made the accompanying note non-negotiable. Dyer v. International Banking Corporation (1920) 262 Fed. 292, 296. Note, however, was made before U. N. I. L.

Accord Spotten v. Dyer (1919) 184 Pac. 23, 26. Nor may it be subject to terms of contract, such terms doing more than retaining title for security, between maker and payee. Klots Throwing Co. v. Manufacturing Commercial Co. (1910) 179 Fed. 813, 815-6. Uniform Negotiable Instruments Law was in force in New York, yet this phase of case not discussed by opinion.

[12] Reynold v. Vint (1914) 73 Ore. 528, 144 Pac. 526. This case is mainly concerned with Sec. 4-2, Uniform Negotiable Instruments Act. For an exhaustive discussion of this question see 32 Harvard Law Review 947.

[13] Fleming v. Sherwood (1912) 24 N. D. 144, 139 N. W. 101, 43 L. R. A. (N. S.) 945, 946, 949. The case of Kimpton v. Studebaker Bros. Co. (1908) 14 Idaho 552, 125 Am. St. Rep. 105, is sometimes cited as standing for the proposition that the additional clause that the payee shall have the right to take possession of the article whenever he may deem himself insecure even before maturity of the note renders the instrument non-negotiable. But a reading of the case shows that the provision for declaring the note before maturity due if the payee felt insecure was more in the minds of the Court than the first proposition. See Kimpton v. Studebaker (1908) 94 Pac. 1039, 1041. See Notes 14 Ann. Cas. 1126, 8 Corpus Juris 129.

[14] Worden Grocer Co. v. Blanding (1910) 161 Mich. 254, 126 N. W. 212, 213, 20 Ann. Cas. 1332, note concerned made before adoption of Uniform Act. In connection with this case one should read the case of Chicago Railway Co. v. Merchants Bank (1890) 136 U. S. 268, 282, 283, quoted by the Michigan Court, but yet reaching the very opposite conclusion.

[15] Choate v. Stevens (1898) 116 Mich. 28, 74 N. W. 289, 43 L. R. A. 237, 278, a common law case.

It remains imposible to harmonize the decisions which exist under the Uniform Act.[16] The District Court of Appeal was bothered by the fact that such a chattel note has been called a short form of chattel mortgage.[17] If this were so, the only remedy in California would be to foreclose under the Code of Civil Procedure, section 726. The Court appreciated that this peculiarity of California law refers particularly to mortgages and in keeping with former decisions refused to extend the application of this section to analogous but different forms of security.[18]

T. H. L.

CORPORATIONS: EFFECT OF FORFEITURE OF FRANCHISE UPON CONTRACTS WITH THIRD PERSON—Forfeiture of the corporation charter because of non-payment of license taxes has been considered as resulting in immediate death to the corporation in California under the provisions of the statutes prior to 1917.[1] The unequivocal terms of the earlier statutes made this attitude necessary.[2] The result was that after forfeiture occurred in fact, though neither proclamation nor notice had been given, no action might be brought by or against a corporation,[3] though those pending against it did not abate.[4] Judgments obtained in such actions were void and open

[16] Supra, n. 5; contra, supra, n. 7.

[17] Chicago Railway Co. v. Merchants Bank (1889) 136 U. S. 268, 283, 10 Sup. Ct. Rep. 999, 34 L. Ed. 349.

[18] Does not apply to pledge. Erlich v. Ewald (1884) 66 Cal. 97, 4 Pac. 1062; Marble Co. v. Merchants Natl. Bank (1911) 15 Cal. App. 347, 352, 115 Pac. 59. Pledge will not affect negotiability. Hellman v. Armstrong (1919) 179 Pac. 432 (Cal. App.) Does not apply to vendor's lien. Samuel v. Allen (1893) 98 Cal. 406, 407, 33 Pac. 273. Nor to mechanics' lien. Bates v. Santa Barbara Co. (1891) 90 Cal. 543, 27 Pac. 438. There is a conflict on deed of trust. Quinn v. Rike (1920) 33 Cal. App. Dec. 761; contra Kraft Co. v. Bryan (1903) 140 Cal. 73, 81, 73 Pac. 745; see 9 California Law Review, 425-8. In regard to negotiability of the note the District Court of Appeal has placed itself in line with the modern viewpoint. "The tendency of modern jurisprudence is to get away from the rigid rules of interpretation which seem to have prevailed when the famous expression of Chief Justice Gibson that 'a negotiable bill or note is a courier without luggage' was coined. The law of negotiable instruments, as a part of the law merchant, is based upon the necessities, usages, and customs of the business, and must develop with it. Whenever the additional stipulations are merely in aid of the collection of the note, and do not constitute an undertaking to give or do something else foreign to that end, they do not destroy negotiability." Farmers & Merchants Bank v. Davis (1919) 80 So. 713 (La.); not an acceleration case, however; see 33 Harvard Law Review, 255, 261.

[1] Stats. 1905, p. 493, amended 1906, p. 22; 1907, pp. 664, 745; 1909, pp. 454, 458; 1911, p. 1094; 1913, p. 513; repealed, Stats. 1913, p. 680. Stats. 1915, p. 422.

[2] Newhall v. Western Zinc Mining Co. (1912) 164 Cal. 380, 128 Pac. 1040.

[3] Crossman v. Vivienda Water Co. (1907) 150 Cal. 575, 89 Pac. 335; Kaiser Land and Fruit Co. (1909) 155 Cal. 638, 103 Pac. 341; Newhall v. Western Zinc Mining Co. (1912) 164 Cal. 380, 128 Pac. 1040; Aalwyn's Law Institute v. Martin (1916) 173 Cal. 21, 159 Pac. 158; National Supply Co. v. Flack (1920) 183 Cal. 124, 190 Pac. 634.

[4] Lowe v. Superior Court (1913) 165 Cal. 708, 134 Pac. 190; Brandon v. Umpqua Lumber Co. (1913) 166 Cal. 322, 136 Pac. 62.